

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No. 2:00CR7-01
(STAMP)

RICHARD ALLEN SMITH, JR.,

Defendant.

MEMORANDUM OPINION AND ORDER
DENYING DEFENDANT'S MOTION FOR RECONSIDERATION

Defendant Richard Allen Smith, Jr., who is appearing pro se,¹ filed a motion for sentence reduction pursuant to 18 U.S.C. § 3582 which this Court denied as the defendant was subject to a mandatory minimum sentence of 240 months as to his conviction for distribution of cocaine base and this Court had already granted what relief was available to the defendant pursuant to the amended sentencing guidelines.²

Thereafter, the defendant filed a notice of appeal pursuant to the Federal Rules of Appellate Procedure contending that he was incorrectly convicted for offenses included in previous indictments rather than the second superseding indictment, his counsel was ineffective in allowing the government to proceed on indictments

¹"pro se" describes a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1237 (7th ed. 1999).

²For a more detailed description of the defendants case, please see generally ECF No. 1388.

other than the second superseding indictment, and this Court lacked subject matter jurisdiction over the defendant. This appeal is currently pending. Shortly after the appeal was noticed by the defendant, he filed the same claims with this Court labeled as a motion to dismiss pursuant to Federal Rule of Criminal Procedure 12. This Court denied the defendant's motion to dismiss. The defendant has now filed a motion for reconsideration of that denial.

As an initial matter, this Court may hear the defendant's motion, despite his appeal, pursuant to Federal Rule of Criminal Procedure 37. Further, this Court finds that the defendant's assertions in his motion do not change the analysis used by this Court in its order denying the defendant's motion to dismiss nor any of the underlying denials of relief by this Court. As such, the defendant's motion for reconsideration is DENIED.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to counsel of record herein.

DATED: September 8, 2014

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE